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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 31, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

We write to express our serious concern over the abbreviated hearing schedule for Judge David Hamilton's nomination to the U.S. Court of Appeals for the Seventh Circuit, and to express our disappointment that you have decided to hold this hearing despite the request by Ranking Member Specter to reschedule the hearing after the Easter recess to give senators adequate time to prepare.

Holding a hearing on Judge Hamilton's circuit court nomination a mere fifteen days after he was nominated is a significant departure from past Committee practice. None of President Bush's circuit court nominees received a hearing so quickly. In fact, on average, senators were afforded 166 days to prepare for hearings on President Bush's circuit court nominees, and 117 days for President Clinton's circuit nominees.

This nomination is ill-suited to being rushed. The vacancy to be filled is not a judicial emergency. In fact, it is the only vacancy in the Seventh Circuit, which is currently the federal appellate court with the most efficient docket. Moreover, Judge Hamilton has been a district court judge for almost 15 years and, by his own calculation, has authored "roughly 1,150 written opinions." He has also written and spoken extensively, generating roughly 2,000 pages of material for the Committee to review.

We have been unable to properly prepare for this hearing on a nomination to a lifetime position in this short timeframe; therefore, we request that Judge Hamilton be invited back to answer senators' questions once we have had an opportunity to prepare. We believe this request is consistent with past practice and would note that past Republican chairmen of this Committee acceded to Democrat requests and held multiple hearings for at least five of President Bush's circuit court nominees, including John G. Roberts' nomination to the D.C. Circuit. Following Justice Roberts' initial hearing on January 29, 2003, senators asserted that they had not had an opportunity to question him sufficiently and a second hearing was held on April 4, 2003. Justice Roberts was confirmed to the D.C. Circuit by voice vote later that year. Consideration of the views of the minority is one of the hallmarks of the United States Senate, and the importance of minority participation is enshrined in numerous Senate and Committee Rules. One such rule is

Senate Standing Rule XXVI(4)(d): "Whenever any hearing is conducted by a committee (except the Committee on Appropriations) upon any measure or matter, the minority on the committee shall be entitled, upon request made by a majority of the minority members to the chairman before completion of such hearing, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of the hearing thereon."

In accordance with this Committee's past precedent and Senate procedure, we respectfully request that you invite Judge Hamilton back for a second hearing after the upcoming recess to afford the minority enough time to properly review his record and prepare appropriate questions. Additionally, this recognition of precedent and accommodation of minority rights would be an important signal of cooperation on President Obama's first judicial nomination.

Sincerely,

